MOTION FILED APR 19 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 505

JOEL A. MALOY, *Petitioner,*

vs.

CITY OF MULBERRY, *a Municipal Corporation,*
Respondent

MOTION FOR ORDER ALLOWING FILING OF PETITION FOR RE-REHEARING ON EXTRAORDINARY GROUNDS AND NOT STATED CIRCUMSTANCES AND PETITION FOR RE-REHEARING.

JOEL A. MALOY,
Petitioner,
920 S. W. 18th Ave.
Miami, Fla.

SUPREME COURT OF THE UNITED STATES

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MOTION FOR ORDER ALLOWING FILING OF PETITION FOR RE-REHEARING ON EXTRAORDINARY GROUNDS AND NOT STATED CIRCUMSTANCES AND PETITION FOR RE-REHEARING.

MOTION

Petitioner respectfully represents unto this Honorable Court:

That he and not attorneys filing petition for rehearing (newly coming into case for that purpose) advised of denial, apparently not complied with rules and said attorneys not having been sufficiently familiar with circumstances to fully present them and deciding in any event not to proceed in lower court, have withdrawn; and it is believed he is entitled to re-rehearing.

WHEREFORE, petitioner moves the Court for an order allowing filing of petition for re-rehearing.

JOEL A. MALOY,
Petitioner.

PETITION FOR REHEARING

It appearing that petition for writ of certiorari denied for failure to comply with rule that there must be reference in the pleadings to the Federal Question involved, so as to give Court jurisdiction, it is respectfully shown:

1. Petitioner started out with one strike against him—attorneys reluctant to file suit because Florida Supreme Court had repeatedly, in prior cases, held this Doctrine of Governmental Immunity for Tortious Acts (under which he was barred from recovery for loss of eye, burned out by fluid of tear gas bomb thrown into face and exploding by drunken police officer, when refused car keys, notwithstanding constitutional guarantees to the contrary, to be the Supreme Law of the State, as is shown by those cases cited by the Court in its opinion affirming the order of dismissal in the case at bar; *City of Miami* v. *Bethel*, 65 So. 2nd, 34, *Britt* v. *City of Ocala*, 65 So. 2nd, 753, and *Williams* v. *Green Cove Springs*, 65 So. 2nd, 56 and others not cited.

That the Court already aware—and passed upon—this doctrine contrary to due process of the law and equal protection of the law constitutional guarantees of Florida, and hence Federal, is Mr. J. Hobson's statement in the William's case: "WE SHOULD NEVER LOSE SIGHT OF THE FACT THAT ALTHOUGH WE ADOPTED THE COMMON AND STATUTE LAW OF ENGLAND ON JULY 4, 1776, WE ESTABLISHED AS THE SUPREME LAW OF THIS STATE THE CONSTITUTION AND DECLARATION OF RIGHTS."

Therefore, it was not necessary in the assignments of error or other pleading, in fact useless, to point out that the order of dismissal of the Circuit Court under authority of this doctrine (he never even got to trial) was denial of those constitutional guarantees, and petitioner should not be deprived because the young attorney inadvertently failed to add to assignment of error No. 4 "THE COURT ERRED IN ITS

DECISION THAT THE CITY OF MULBERRY, FLORIDA IS IMMUNE FROM LIABILITY FROM THE WILLFUL AND MALICIOUS ACTS OF ITS EMPLOYEES" the words, "UNDER THE DUE PROCESS OF THE LAW AND EQUAL PROTECTION OF THE LAW GUARANTEES OF THE STATE OF FLORIDA AND THE UNITED STATES", or to refer to those in the complaint.

And I most respectfully ask: Is it not the primary function of this Court to administer justice to the Citizens of the U. S. and not bound by rules, regulations and technicalities as to deprive any one of them of his rights?

Apparently such holdings for benefit of Cities—majority opinion in Bethel case finding Court powerless to hold otherwise until ordered by Legislature and J. Hobson, analysing the situation saying that they are no longer in need of protection, Cities now "big business" and should take place along with private corporations. Also, liability insurance now available to them is noted in CLAY, INSURANCE BY CITIES AGAINST TORT CLAIMS, Ninulo Mun. L. Rev. 404-421 (1953) and in U. of Fla. L. Rev. 352 (1953). *(City of Mulberry's mayor, as shown by petitioner's record notified that Dr. Dunnington of New York, tops, confirmed loss of eye, not only admitted negligence, but directed filing of formal claim for damages, against it and its carrier, and this done (R. 5) and shows attack without provocation.)* Filing of suit received State wide circulation a large notice appearing in Tampa Morning Tribune.

2. By the time petitioner reached this Court he had two strikes against him—no known attorney willing to take appeal because of the effect of this Court's segregation ruling upon our Supreme Court, that Court emphatically pointing out in an opinion that even the birds and animals are allowed to segregate, and no doubt this court aware of its ruling on entire Southland. Others adding that if petitioner were of the Negro race, he might have a chance. BETHEL IS A NEGRO and this Court should realize what those

of his race may expect in view not only of that ruling but this ancient doctrine; AND IT SHOULD BE NOTED THAT THE OFFICERS BRUTALLY ATTACKING BETHEL TO COMPEL HIM TO CONFESS TO CRAP PLAYING (ONE HOLDING HIM WHILE ANOTHER BEAT EYE OUT WITH BILLY) WERE COLD SOBER. (This Court held strapping of Rochin to table and pumping of evidence from his stomach "offended a sense of justice" and was too much like the ancient practice of the rack and screw to be tolerated. *Rochin* v. *California*, 342 U.S. 165, etc.)

3. It was erroneously stated in original petition that U.S.C.A. Title 28 Sec. 1257(2) sustained the court's jurisdiction, instead of Sec. 1257(3). Also reference is now made to Article VI, Clause 2 of U. S. Constitution, providing: "This Constitution and the laws of the United States . . shall be the Supreme Law of the Land . . *anything in the Constitution or laws of any State to the contrary notwithstanding.*

Petitioner believes with assistance he can prepare brief and stands ready to argue it personally before the Court, and requests permission so to do.

WHEREFORE, it is respectfully urged that this petition be granted and upon reconsideration the judgment of the Supreme Court of Florida reversed.

JOEL A. MALOY,
Petitioner.

I, Joel A. Maloy, hereby certify that this petition is presented in good faith and not for delay and is restricted to the grounds above specified.

JOEL A. MALOY,
Petitioner.

(8409-5)

Office - Supreme Court, U. S.
FILED
NOV 3 1955
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 505

JOEL A. MALOY,

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vs.

CITY OF MULBERRY, A MUNICIPAL CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

JOEL A. MALOY,
405 S. E. 4th Avenue,
Delray Beach, Fla.,
Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

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JOEL A. MALOY,

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vs.

CITY OF MULBERRY, A MUNICIPAL CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The petition of Joel A. Maloy respecfully shows to this Honorable Court:

I

Opinions of the Court Below

1. Order of Dismissal, Circuit Court of Polk County, Florida, under authority of *City of Miami* v. *Bethel*, 65 So. 2d 34, dated April 29, 1955 (R. 10).

2. Opinion Supreme Court of Florida, affirming Circuit Court and citing *City of Miami* v. *Bethel*, *Britt* v. *City of Ocala*, *Williams* v. *City of Green Cove Springs*, 65 So. 2d 34, 753 and 56 respectively; and *Wilford* v. *City of Jacksonville Beach*, 79 So. 2d 516. Copy opinion attached, certified, dated May 25, 1955, reported 80 So. 2d 609.

II

Reasons Relied On for Allowance of the Writ

1. (a) Decision of Supreme Court of Florida contrary to and denial of guaranties of 5th, 8th and 14th Amendments to Constitution of the United States and Due Process of the Law clause of 14th Amendment and Equal Protection of the Law of Sec. 1 of the 14th Amendment to the Constitution of the United States and calls for this Court's power of supervision.

(b) Dismissal of suit to recover damages for injuries under authority of doctrine of governmental immunity for tortious acts contrary to and denial of the rights guaranteed under Secs. 4, 8 and 12 of Declaration of Rights of the Constitution of the State of Florida.

(c) Dismissal of suit to recover damages for injuries under authority of Doctrine of Governmental Immunity for Tortious Acts denial of Constitutional Rights guaranteed under the laws and Constitutions of the State of Florida and the United States, under the facts of this case.

2. Judgment sought to be reviewed is Mandate dated June 10, 1955, the same being Final Judgment of Supreme Court and ordering Circuit Court Order dated April 29, 1955 "*Be and the same is hereby affirmed.*" Certified copy attached hereto.

3. This Honorable Court on Sept. 13, 1955 granted motion filed Sept. 6 for extention of time to file petition to and including Nov. 5, 1955.

4. It is believed that U. S. C. A. Title 28, Sec. 1257(2) sustains the jurisdiction of the Supreme Court of the United States in this cause.

III

Questions Involved

1. Where police officer hired by City was known to habitually indulge in intoxicating liquors is furnished with highly dangerous instrumentality, substance or weapon for regular duty, to-wit: a tear gas bomb and uses it while intoxicated without provocation to commit assault and battery upon accused in custody and suit to recover damages for injuries dismissed under authority of the Doctrine of Governmental Immunity for Tortious Acts, did he receive a fair and impartial trial under the Due Process of the Law guaranty of our Federal Constitution and the Constitution of the State of Florida and under the Equal Protection of the Law guaranty of Sec. 1 of the 14th Amendment to the Constitution of the United States and Sec. 4 of the Declaration of Rights of the Constitution of the State of Florida?

2. Where police Officer without provocation commits assault and battery upon Accused in custody with dangerous weapon furnished for regular duty in violation of the Eighth Amendment to the Federal Constitution and Sec. 8 of the Declaration of Rights of the Constitution of the State of Florida, and suit to recover damages for injuries dismissed under authority of the Doctrine of Governmental Immunity for Tortious Acts, did he receive a fair and impartial trial under the Due Process of the Law guaranty of our Federal Constitution and the Constitution of the State of Florida and under the Equal Protection of the Law guaranty of Sec. 1 of the 14th Amendment to the Constitution of the United States and Sec. 4 of the Declaration of Rights of the Constitution of the State of Florida?

3. Where City through its Police Officer commits assault and battery upon Accused in custody to compel him to be witness against himself by surrender of automobile keys in

proof of offense charged in violation of the Fifth and Fourteenth Amendments to the Federal Constitution and Sec. 12 of the Declaration of Rights of the Constitution of the State of Florida, and suit to recover damages for injuries dismissed under authority of the Doctrine of Governmental Immunity for Tortious Acts, did he receive a fair and impartial trial under the Due Process of the Law guaranty of our Federal Constitution and the Constitution of the State of Florida and under the Equal Protection of the Law guaranty of Sec. 1 of the 14th Amendment to the Constitution of the United States and Sec. 4 of the Declaration of Rights of the Constitution of the State of Florida.

4. Where three Supreme Court Justices in strong dissenting opinions hold Doctrine of Governmental Immunity for Tortious Acts contrary to and denial of State and Federal Constitutional guaranties, the supreme law, in three separate cases:—*City of Miami* v. *Bethel* (officer held accused while other beat eye out with billy to compel crap playing confession); *Williams* v. *City of Green Cove Springs* (human life negligently consumed in jail burning) and *Olivier* v. *St. Petersburg* (child loses life in negligent street repairs), 65 So. 2d 34, 56 and 71 respectively, and here we have situation predicted by Mr. Justice Terrell in *Bethel* case, *supra*, p. 39, who dissenting said:

> "If a policeman *as agent of the City* can take one into custody and beat his eye out with billy furnished him by his employer in the hopes of extracting a confession and then claim immunity because he is performing a governmental function, *then there is no limit to the devices he may resort to to terrorize one suspected of crime.* (Emphasis supplied.)
>
> By no stretch of the imagination was he performing a sovereign function.
>
> The very purpose of the Fifth Amendment to the

Federal Constitution was to put an end to confessions produced by 'third decree' methods or other forms of torture. It was flagrantly violated in this case."

Officer brutally attacking petitioner to compel him to be a witness against himself with dangerous weapon furnished for the purpose. Further, Mr. Justice Hobson finding in *Bethel* case *supra*, that this age old doctrine—its origin lost in antiquity—not part of statute law of England at time of State's adoption, July 4, 1776, and therefore "court made" should be abolished by it, not legislature, as was held only remedy in *Bethel* case (which facts shocked court's conscience) and this Doctrine of Governmental Immunity for Tortious Acts nothing more than legal permit to torture accused during and subsequent to arrest, does refusal to abolish call for the power of supervision of our Highest Tribunal?

IV

Constitutional Provisions Involved

1. Cruel and Unusual Punishment.

Amendment VIII. Constitution of the United States:

"• • • nor cruel and unusual punishments inflicted." U. S. C. A. 1 to 13.

Sec. 8, Declaration of Rights, Florida Constitution.

"• • • nor cruel or unusual punishment • • •." Florida Statutes 1953, Vol. 1. p. 2.

2. Not Compelled to Witness Against Himself.

Amendments V. and XIV. Constitution of United States:

"* * * nor shall be compelled in any criminal case to be a witness against himself." U. S. C. A. Vol. 1.

Sec. 12, Declaration of Rights, Florida Constitution:

"* * * nor compelled in any criminal case to be a witness against himself." Florida Statutes 1953, Vol. 1. p. 2.

3. Due Process of the Law.

Amendment XIV, Constitution of the United States:

"* * * nor shall any state deprive any person of life, liberty or property without due process of the law." U. S. C. A. 14. pt. 3.

Sec. 4. Declaration of Rights, Florida Constitution:

"All courts in this State shall be open so that every person for any injury done him * * * shall have remedy by due process of law." Florida Statutes 1953, Vol. 1. p. 1.

4. Equal Protection of the Law.

Amendment XIV. Sec. 1 Constitution of the United States:

"* * * nor deny anyone person within its jurisdiction the equal protection of the law." U. S. C. A. 14. pt. 1.

SEC. 4. Declaration of Rights, Florida Constitution:

"All courts in this State shall be open so that every person for any injury done him in his land, goods, person or reputation shall have remedy by due court of law, and right and justice shall be administered without sale, denial or delay."

V

Concise Statement of the Case

Police Officer hired by City known to habitually indulge in intoxicating liquors was furnished in addition to usual equipment for regular duty (gun and billy) with tear gas bomb, highly dangerous instrumentality, substance or weapon, few have ever seen or know how to use. While intoxicated he charged petitioner with violation of traffic ordinance and his automobile then parked on private parking lot, demanded keys for removal to City jail and proof of driving at time of arrest. Refused he threw tear gas bomb directly at petitioner to compel surrender and striking his face exploded, severely burning him about head and face and causing loss of sight of right eye.

Suit brought in Circuit Court of Polk County for recovery of expenditures incurred in long hospitalization and medical attention, damages for loss of eye and inability to return to former gainful skilled employment. Complaint alleged negligence in such hiring and equipping; cruel and unusual punishment in violation of Eighth Amendment to Federal Constitution and Sec. 8 of Declaration of Rights of Constitution of Florida and to compel petitioner to witness against himself in violation of Fifth and Fourteenth Amendments to Federal Constitution and Sec. 12 of Declaration of Rights of Constitution of Florida (R. 2-9).

Thereafter Circuit Court granting Motion to Dismiss,

finding *City of Miami* v. *Bethel*, 65 So. 234 controlling—holding City not liable under Doctrine of Governmental Immunity for Tortious Acts—appealed to Supreme Court (R. 10-14). On May 25, Opinion filed and June 10, 1955 Court ordered in Mandate that Circuit Court order of April 29, 1954 "Be and the same is hereby affirmed" (R. 15). Sept. 10, 1955 Notice of Appeal filed (R. 16).

Constitutional questions first raised in Amended Complaint and generally in Assignments of Error, rules not restricting briefs thereto (R. 3-12). Neither Circuit Court nor Supreme Court passed upon Constitutional questions, finding *City of Miami* v. *Bethel* entirely controlling. Petition for rehearing useless, the Court bound by this ancient doctrine refusing in cases cited in opinion to recognized its holdings denial of due process and equal protection of the law provisions and strong dissenting opinions of Mr. Justices Hobson and Terrell, concurred in by Chief Justice Roberts call attention to denial. J. Hobson, continuing to dissent, aware of this and urging appeal in *Bethel* case said:

> Absent a Federal question the SUPREME law of this State is found in our Constitution and Declaration of Rights."

VI

Argument in Support of Reasons for Allowance of Writ

It is believed decision of paramount interest to the Citizens of the United States at large, this Honorable Court not yet having—

1. Passed upon whether or not dismissal of suit for damages against Municipal Corporation under authority of the Doctrine of Governmental Immunity for Tortious Acts contrary to and denial of Constitutional guaranties under the

Due Process of the Law and Equal Protection of the Law provisions of our Federal and State Constitutions.

2. Passed upon whether or not dismissal of suit for damages against Municipal Corporation for violation of the 5th, 8th and 14th Amendments to the Federal Constitution and Sec. 12 of Declaration of Rights of Florida Constitution, under authority of the Doctrine of Governmental Immunity for Tortious Acts contrary to and denial of Constitutional guaranties under the Due Process of the Law and Equal Protection of the Law provisions of our Federal and State Constitutions.

And the Supreme Court of Florida, bound by this age old insidious doctrine, archaic in this modern world of today, not only deprive our citizens of constitutional rights, by adherence thereto make possible the situation here. Altho unable to secure counsel for filing this petition, if granted, petitioner now has promise of attorney he will become member of this bar and "prepare brief and argue it before the Court."

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Florida, commanding that Court to certify and to send to this Court for its review and determintaion, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 26,176, Joel A. Maloy appellant v. City of Mulberry, appellee, and that the said Final Judgment of the Supreme Court of the State of Florida may be reversed by this Honorable Court, and your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

JOEL A. MALOY,
Petitioner.

APPENDIX "A"

IN THE SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1955 EN BANC.

Case No. 26,176

JOEL A. MALOY, *Appellant,*

vs.

CITY OF MULBERRY, A MUNICIPAL CORPORATION, *Appellee*

Opinion filed May 25, 1955.

An Appeal from the Circuit Court for Polk County, D. O. Rogers, Judge.

William T. Russell, for Appellant.

B. J. Langston of Carver & Langston, for Appellee.

Per CURIAM:

Affirmed under the authority of *City of Miami* v. *Bethel et al.* (Fla. 1953), 65 So. 2d 34; *Britt* v. *City of Ocala* (Fla. 1953), 65 So. 2d 753; *Williams* v. *City of Green Cove Springs* (Fla. 1953), 65 So. 2d 56; and *Wilford* v. *City of Jacksonville Beach,* filed April 13, 1955.

Drew, C.J., Terrell, Sebring, Roberts and Thornal, JJ., Concur.

Thomas and Hobson, JJ., Dissent.

THOMAS, J., Dissenting:

I think the appeal should be dismissed for lack of a final judgment.

HOBSON, J., Dissenting:

See my special concurring opinion in *City of Miami* vs. *Bethel* (Fla. 1953), 65 So. 2d 34. See also my dissenting

opinion in *Williams* v. *City of Green Cove Springs* (Fla. 1953), 65 So. 2d 56.

A true copy. Test:

GUYTE P. MCCORD,
Clerk, Supreme Court.

APPENDIX "B"

MANDATE FROM SUPREME COURT

THE STATE OF FLORIDA

To the Honorable, the Judge of the Circuit Court for the Tenth Judicial Circuit of Florida, Greeting:

WHEREAS, Lately in the Circuit Court of the Tenth Judicial Circuit, in and for the County of Polk in a cause wherein Joel A. Maloy, was Plaintiff and City of Mulberry, a municipal corporation, was defendant, the Order of said Circuit Court was rendered April 29, 1954 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

AND WHEREAS, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1955, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 25th day of May A. D. 1955 it was considered by said Supreme Court that the said Order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant its costs by it in this

behalf expended, which costs are taxed at the sum of — Dollars; therefore,

YOU ARE HEREBY COMMANDED, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

WITNESS, The Honorable E. HARRIS DREW, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 10th day of June 1955.

(S.) GUYTE P. MCCORD,
Clerk, Supreme Court of Florida.

[SEAL.]

A true copy. Test:

GUYTE P. MCCORD,
Clerk Supreme Court.

(5036-9)

FILED
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HAROLD B. WILLEY, Clerk

IN THE

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CITY OF MULBERRY, A Municipal Corporation,
Respondent

PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

ROBERT D. TYLANDER
907 Harvey Building
West Palm Beach, Florida

FRED S. GILBERT, JR.
1001 Connecticut Avenue, N.W.
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable Justices of the Above Court:

Comes now Joel A. Maloy, petitioner in the above styled cause and files this his petition for rehearing of the order on petition for writ of certiorari previously entered herein; and as grounds therefor states the following:

1. In the original petition for writ of certiorari, petitioner was not represented by counsel for the reason that petitioner was unable to get someone who was sufficiently interested in the matter without a retainer fee which petitioner was financially unable to pay. The petition was prepared with the assistance of petitioner's wife who has had previous legal experience as secretary to a judge and several lawyers. The fourth reason petitioner relied on for allowance of the writ was based

on a belief that U.S.C.A. Title 28, Sec. 1257(2) sustains the jurisdiction of the Supreme Court of the United States in this cause. U.S.C.A. Title 28, Sec. 1257(2) is as follows:

> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

Actually the validity of a statute of the state of Florida is not in question in this case.

Petitioner should have said that the basis for the jurisdiction of this honorable Court is found in U.S.C.A. Title 28, Sec. 1257(3) which is as follows:

> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 72 Stat. 929.

Rights of the petitioner are set up and claimed under the Constitution of the United States. They are the rights found in the following provisions of the Fourteenth Amendment of the Constitution of the United States:

> Amendment XIV. Constitution of the United States:
>
> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws."

The time has come to declare unsound the doctrine that a municipality acting in a governmental, as distinguished from a proprietary, capacity is not liable in tort for negligence of its officers, agents or employees. Imposition of this doctrine denies to the person injured the equal protection and due process contemplated by our United States Constitution.

2. In the original petition no mention was made of the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal constitutional questions were raised. Under the Florida procedure there would be no occasion to specifically raise the questions and the only reference made to the federal questions in the appellate court was in briefs filed and oral argument made before the court. Counsel is informed that such was done, and one of counsel listed below has seen a copy of the brief filed in the appellate court in which the argument was used.

WHEREFORE, petitioner prays that this honorable Court will grant this petition for rehearing; and counsel certifies that the petition is presented in good faith and not for delay and is restricted to the grounds above specified.

Respectfully submitted,

ROBERT D. TYLANDER
907 Harvey Building
West Palm Beach, Florida

FRED S. GILBERT, JR.
1001 Connecticut Avenue, N.W.
Washington 6, D. C.

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MOTION

Petitioner respectfully represents unto this Honorable Court:

That he and not attorneys filing petition for rehearing (newly coming into case for that purpose) advised of denial, apparently not complied with rules and said attorneys not having been sufficiently familiar with circumstances to fully present them and deciding in any event not to proceed in lower court, have withdrawn; and it is believed he is entitled to re-rehearing.

WHEREFORE, petitioner moves the Court for an order allowing filing of petition for re-rehearing.

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PETITION FOR REHEARING

It appearing that petition for writ of certiorari denied for failure to comply with rule that there must be reference in the pleadings to the Federal Question involved, so as to give Court jurisdiction, it is respectfully shown:

1. Petitioner started out with one strike against him—attorneys reluctant to file suit because Florida Supreme Court had repeatedly, in prior cases, held this Doctrine of Governmental Immunity for Tortious Acts (under which he was barred from recovery for loss of eye, burned out by fluid of tear gas bomb thrown into face and exploding by drunken police officer, when refused car keys, notwithstanding constitutional guarantees to the contrary, to be the Supreme Law of the State, as is shown by those cases cited by the Court in its opinion affirming the order of dismissal in the case at bar; *City of Miami* v. *Bethel*, 65 So. 2nd, 34, *Britt* v. *City of Ocala*, 65 So. 2nd, 753, and *Williams* v. *Green Cove Springs*, 65 So. 2nd, 56 and others not cited.

That the Court already aware—and passed upon—this doctrine contrary to due process of the law and equal protection of the law constitutional guarantees of Florida, and hence Federal, is Mr. J. Hobson's statement in the William's case: "WE SHOULD NEVER LOSE SIGHT OF THE FACT THAT ALTHOUGH WE ADOPTED THE COMMON AND STATUTE LAW OF ENGLAND ON JULY 4, 1776, WE ESTABLISHED AS THE SUPREME LAW OF THIS STATE THE CONSTITUTION AND DECLARATION OF RIGHTS."

Therefore, it was not necessary in the assignments of error or other pleading, in fact useless, to point out that the order of dismissal of the Circuit Court under authority of this doctrine (he never even got to trial) was denial of those constitutional guarantees, and petitioner should not be deprived because the young attorney inadvertently failed to add to assignment of error No. 4 "THE COURT ERRED IN ITS

DECISION THAT THE CITY OF MULBERRY, FLORIDA IS IMMUNE FROM LIABILITY FROM THE WILLFUL AND MALICIOUS ACTS OF ITS EMPLOYEES" the words, "UNDER THE DUE PROCESS OF THE LAW AND EQUAL PROTECTION OF THE LAW GUARANTEES OF THE STATE OF FLORIDA AND THE UNITED STATES", or to refer to those in the complaint.

And I most respectfully ask: Is it not the primary function of this Court to administer justice to the Citizens of the U. S. and not bound by rules, regulations and technicalities as to deprive any one of them of his rights?

Apparently such holdings for benefit of Cities—majority opinion in Bethel case finding Court powerless to hold otherwise until ordered by Legislature and J. Hobson, analysing the situation saying that they are no longer in need of protection, Cities now "big business" and should take place along with private corporations. Also, liability insurance now available to them is noted in CLAY, INSURANCE BY CITIES AGAINST TORT CLAIMS, Ninulo Mun. L. Rev. 404-421 (1953) and in U. of Fla. L. Rev. 352 (1953). *(City of Mulberry's mayor, as shown by petitioner's record notified that Dr. Dunnington of New York, tops, confirmed loss of eye, not only admitted negligence, but directed filing of formal claim for damages, against it and its carrier, and this done (R. 5) and shows attack without provocation.)* Filing of suit received State wide circulation a large notice appearing in Tampa Morning Tribune.

2. By the time petitioner reached this Court he had two strikes against him—no known attorney willing to take appeal because of the effect of this Court's segregation ruling upon our Supreme Court, that Court emphatically pointing out in an opinion that even the birds and animals are allowed to segregate, and no doubt this court aware of its ruling on entire Southland. Others adding that if petitioner were of the Negro race, he might have a chance. BETHEL IS A NEGRO and this Court should realize what those

of his race may expect in view not only of that ruling but this ancient doctrine; AND IT SHOULD BE NOTED THAT THE OFFICERS BRUTALLY ATTACKING BETHEL TO COMPEL HIM TO CONFESS TO CRAP PLAYING (ONE HOLDING HIM WHILE ANOTHER BEAT EYE OUT WITH BILLY) WERE COLD SOBER. (This Court held strapping of Rochin to table and pumping of evidence from his stomach "offended a sense of justice" and was too much like the ancient practice of the rack and screw to be tolerated. *Rochin* v. *California,* 342 U.S. 165, etc.)

3. It was erroneously stated in original petition that U.S.C.A. Title 28 Sec. 1257(2) sustained the court's jurisdiction, instead of Sec. 1257(3). Also reference is now made to Article VI, Clause 2 of U. S. Constitution, providing: "This Constitution and the laws of the United States . . shall be the Supreme Law of the Land . . *anything in the Constitution or laws of any State to the contrary notwithstanding.*

Petitioner believes with assistance he can prepare brief and stands ready to argue it personally before the Court, and requests permission so to do.

WHEREFORE, it is respectfully urged that this petition be granted and upon reconsideration the judgment of the Supreme Court of Florida reversed.

JOEL A. MALOY,
Petitioner.

I, Joel A. Maloy, hereby certify that this petition is presented in good faith and not for delay and is restricted to the grounds above specified.

JOEL A. MALOY,
Petitioner.

(8409-5)